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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2199-21**

**IN THE MATTER OF THE
ELEANOR M. WEISBROD
ENDOWED SCHOLARSHIP.**

Submitted January 18, 2023 – Decided April 6, 2023

Before Judges Messano, Gilson, and Rose.

On appeal from the Superior Court of New Jersey,
Chancery Division, Ocean County, Docket No. C-
000114-21.

McElroy, Deutsch, Mulvaney & Carpenter, LLP,
attorneys for appellant Georgian Court University
(Kathleen N. Fennelly and Melissa M. Bracuti, of
counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for
respondent State of New Jersey (Lindsey R. Curewitz,
Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff Georgian Court University (GCU or the University) appeals from portions of orders denying, in part, its application to modify the criteria for awarding scholarships from the Eleanor M. Weisbrod Scholarship Fund (the

Scholarship). More than thirty years ago, Weisbrod endowed the Scholarship to make awards to GCU students who were Catholic, residential students with financial needs, majoring in math, and maintaining a 3.0 grade point average (GPA). When Weisbrod established the Scholarship, and at the time of her death, GCU admitted only female students.

The student body at GCU has changed since the Scholarship was established and in recent years only a small percentage of GCU students meet the Scholarship's criteria. Consequently, in the last several years not all funds available from the Scholarship have been awarded.

GCU filed an action in the chancery court seeking permission to expand the criteria for the Scholarship. The Attorney General supported GCU's application on a condition that GCU accepted. The chancery court, however, allowed one modification only and denied the other modifications. Because the judge inappropriately considered information outside the record, we reverse and remand for a new hearing before another judge.

I.

GCU was founded in 1908 by the Sisters of Mercy, a Roman Catholic female religious organization. In 1924, the college was relocated to its current

campus in Lakewood. Thereafter, GCU was granted status as a university, and in 2013 it became a co-educational institution.

Eleanor M. Weisbrod graduated from GCU in 1944, with a major in math. When Weisbrod attended GCU, all the students were female, the majority of whom were Roman Catholic and resided on campus.

In 1989, Weisbrod established the Scholarship at GCU through a gift agreement (the Gift Agreement), which provided that the income from the "perpetual" endowment be used for "scholarship purposes." The Gift Agreement states that scholarships "shall be made to mathematic majors who are Catholic, full-time resident students with need[,]" who maintain a 3.0 GPA.

Seven years later, in 1996, Weisbrod created the Eleanor M. Weisbrod Trust (the Trust) to govern property she put in the Trust. The Trust was amended and restated by the Sixth Amendment to the Trust agreement in November 2007 (the Final Trust Agreement). The Final Trust Agreement directed that, following Weisbrod's death, a percentage of the Trust's property would be added to the Scholarship. In directing that additional gift, the Final Trust Agreement stated: "The recipient(s) of the [s]cholarship(s) will be financially needy students of academic excellence in undergraduate school, being a full-time resident student in the field of Mathematics." The Final Trust Agreement also

provided funds for the establishment of two other scholarships at GCU: one for undergraduate students "in a field of [] education," and one for graduate students "in a field of the recipient's own selection."

Weisbrod died in 2008. In the following two years, the Scholarship endowment grew from less than \$200,000 to over \$1.5 million thanks in part to additional funds from the Trust. That growth continued over the next decade, and by June 2020, the market value of the Scholarship endowment was over \$4.1 million.

Meanwhile, the demographics of the students attending GCU changed. Between 2010 and 2020, GCU's student population decreased by sixteen percent and the number of female undergraduate students decreased by twenty-six percent. In 2020, less than half of GCU's students were Roman Catholic and only twenty-two percent of all undergraduate students lived on campus. Moreover, in 2021, only seventeen GCU students were female math majors, and those students constituted less than 1.5 percent of GCU's full-time female students.

Consequently, in recent years, only a relatively small number of GCU students met the Scholarship criteria. For the academic years 2020-21 and 2021-22, only one GCU student was eligible for the Scholarship. During those years,

the Scholarship awarded just over \$86,000 of the more than \$419,000 available in income from the Scholarship's endowment. That under-distribution of available Scholarship funds continued a pattern that had increased over the past decade. Since 2010, over \$1.3 million in Scholarship funds have not been distributed because of the criteria-restrictions placed on awards from the endowment by the Gift Agreement.

In July 2021, GCU filed a verified complaint and moved to proceed in a summary action under Rule 4:67. GCU requested the chancery court to apply the doctrine of cy pres and N.J.S.A. 15:18-30 to modify the criteria for making awards from the Scholarship. Specifically, GCU sought three modifications to allow awards from the Scholarship to (1) students of all religious faiths; (2) commuter students, as well as residential students; and (3) students pursuing math-based and science-based majors. The University did not seek to change the criteria that awards be made to female students, with financial needs, and a 3.0 GPA.

In support of its application, GCU submitted a certification from P. Charles DiLorenzo, who was Weisbrod's long-serving attorney. DiLorenzo had prepared Weisbrod's last will and testament, as well as the Trust and Final Trust

Agreement. Based on his understanding of Weisbrod's intent, DiLornezo supported GCU's application to modify the criteria for the Scholarship.

GCU gave notice of its application to the New Jersey Attorney General in his common law *parens patriae* role as protector of the public interest in charitable gifts and trusts. The Attorney General responded that he did not object to the modifications provided that they were implemented on a tiered basis. That is, the original criteria would remain in place, and the modified and expanded criteria would be used only if, in any year, there was remaining income available for additional awards. The University agreed to the Attorney General's condition and submitted a proposed consent order to allow the modifications on a tiered basis.

Without hearing argument or holding a hearing, on September 24, 2021, a chancery judge entered an order denying GCU's application. That same day, the judge explained his reasons on the record. The judge did not consider the tiered-based award plan reflected in the proposed consent order. Instead, the judge concluded that Weisbrod did not intend to allow changes to the criteria for the Scholarship.

GCU moved for reconsideration and supported its motion with a certification from Matthew R. Manfra, GCU's Vice President for Institutional

Advancement. The Manfra certification provided information concerning the Scholarship and GCU's student body. The Attorney General did not object to the motion and effectively supported reconsideration by waiving his appearance if the court decided to hear the motion.

On November 5, 2021, the judge heard argument on the motion for reconsideration. After considering GCU's submissions, the judge stated that he would modify the Scholarship criteria, at least in part, to include commuter-students in addition to residential students. The judge reasoned that the commuter-student modification was not inconsistent with Weisbrod's intent. The judge then stated that he was skeptical that the other two modifications complied with Weisbrod's intent. Nevertheless, the judge allowed the University to submit additional historical information to support its application. Thereafter, GCU submitted an additional certification from Manfra, which set forth more details about the Scholarship and GCU's student body.

On January 7, 2022, and February 4, 2022, the chancery judge heard additional arguments from GCU's counsel. Ultimately the judge ruled that he would grant in part and deny in part the application. He allowed the commuter-student modification but denied the religious and academic-major modifications. Relying on unidentified materials he had independently searched

for and read, the judge determined that Weisbrod had strong beliefs in her Catholic faith and her math training. The judge reasoned that Weisbrod did not intend to allow the Scholarship criteria to be changed to allow awards to students who were not Catholic and who were not math majors. In that regard, the judge stated:

I read a little bit about her in our adjournment, and it appears that she made a lot of gifts. And all her gifts, I think, were based on her experience. It appears that she was a teacher at a Catholic school, and all of her gifts appear to be to Catholic schools. And I didn't – I wasn't able to find whether those gifts included an – (indiscernible – speech garbled) – major.

. . . .

I read the papers and I even went further and read some other things; and in reading about her life, the important things in her life were her faith, were her belief in the science of math, and how those things had benefitted her as a teacher, and she wanted those things – it seems like she wanted to share those things with other people.

. . . .

I couldn't find any place where she made a gift that wasn't Catholic – that wasn't a Catholic school or wasn't in a – you know, presumably at a Catholic environment. I didn't find it.

. . . .

I just can't help but come away with the feeling that there's a woman who grew up in a time when, you

know, women were told you couldn't do math. You couldn't do these things. You couldn't – you know, and the things that benefitted her through her life, she wanted to encourage women to do because apparently, she had success with those things. And to me, I just – to carve out those things, which it just appears I don't think there's – can there be anything more important than given her history of gifts and the Catholic faith requirement? I don't think there is.

On February 7, 2022, the judge entered an order granting in part and denying in part GCU's application to modify the criteria of the Scholarship. The judge allowed the modification to permit commuter students, as well as residential students, to receive the Scholarship, but denied the modifications to allow awards to students of any religious background and students pursuing math-based and science-based majors.

GCU now appeals from the portions of the September 24, 2021 order and the February 7, 2022 order denying its application to modify the Scholarship criteria. The Attorney General has submitted a letter stating that he continues not to object to all three modifications provided they are applied on a tiered basis. On April 6, 2022, the judge filed a written amplification under Rule 2:5-1 further explaining the reasons for his ruling.

II.

On appeal, GCU makes two arguments. First, it contends that the chancery judge based his rulings on information outside the record and those findings were not support by substantial credible evidence. Second, GCU asserts that it established the grounds for modifying and expanding the Scholarship criteria under the cy pres doctrine and all its modifications should have been allowed.

The cy pres doctrine is a "judicial mechanism for the preservation of a charitable trust when accomplishment of the particular purpose of the trust becomes impossible, impractical or illegal." Sharpless v. Medford Monthly Meeting of Religious Soc. of Friends, 228 N.J. Super. 68, 74 (App. Div. 1988). "If the settlor manifests an intent to devote the trust to a charitable purpose more general than the frustrated purpose, a court may apply the trust funds to a charitable purpose as similar as possible to the particular purpose of the settlor instead of allowing the trust to fail." Ibid. (citing Howard Sav. Inst. v. Peep, 34 N.J. 494, 500 (1961)). The doctrine is codified in N.J.S.A. 3B:31-29(a), which states, in relevant part:

if a particular charitable purpose becomes unlawful,
impractical, impossible to achieve, or wasteful:
(1) the trust does not fail, in whole or in part;

- (2) the trust property does not revert to the settlor's estate; and
- (3) the court may modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

Similarly, the cy pres doctrine applies to gift instruments under N.J.S.A.

15:18-30(c). That statute provides, in relevant part:

If a particular charitable purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impractical, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purpose of the institution or charitable intent of the donor.

There is no dispute that the Scholarship is not distributing all available income. Nor is there a dispute that the Scholarship's unused funds do not revert to Weisbrod's estate. The questions are whether the charitable purpose had become impractical or wasteful and whether Weisbrod would have intended modifications to her restrictions.

In reviewing a summary action conducted under Rule 4:67, we generally use the substantial credible evidence standard. See O'Connell v. N.J. Mfrs. Ins. Co., 306 N.J. Super. 166, 172-73 (App. Div. 1997). "Findings by the trial judge are considered binding on appeal when supported by adequate, substantial and

credible evidence." Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974). "Our review of a trial judge's legal conclusions is de novo." Walid v. Yolanda for Irene Couture, Inc., 425 N.J. Super. 171, 179 (App. Div. 2012).

The chancery judge did not conduct a hearing on GCU's application. Instead, the judge heard argument by counsel and reviewed documents. In making his finding concerning Weisbrod's intent, the judge relied on information outside the record, which he had apparently looked up but did not identify. That was an error, and we cannot say that there is substantial credible evidence in the record supporting the judge's findings. See N.J. Div. of Youth & Fam. Servs. v. J.Y., 352 N.J. Super. 245, 264 (App. Div. 2002) (explaining that a court's consideration of documents not identified in the record "not only violated basic rules of trial practice, R. 1:2–3, but inhibited the appellate process by depriving the appellate court of a complete record on appeal").

We therefore vacate the chancery judge's September 24, 2021 and February 7, 2022 orders, and remand for a new hearing. Because the original judge has already expressed views based on the evidence outside the record, we direct that the new hearing be conducted by a different judge. See N.J. Div. of Youth & Fam. Servs. v. A.W., 103 N.J. 591, 617 (1986) (remanding to a

different judge where original judge "relied on inappropriate factors in reaching its determination" and "ha[d] heard this evidence and may have a commitment to [his or her] findings"); J.G. v. J.H., 457 N.J. Super. 365, 376 (App. Div. 2019) (original judge "may have formed a view of the situation through these proceedings").

Reversed and remanded for a new hearing. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION